

wireless broadband allowing full-power operations across the band in the entire contiguous United States, while also ensuring full protection of incumbent Federal operations remaining in particular locations. As part of this process, the Commission also adopted rules related to the relocation of incumbent non-Federal radiolocation operations, and reimbursement of expenses related to such relocation.

Sections 2.016 and 27.1603 require a 3.45 GHz Service licensee whose license area overlaps with a Cooperative Planning Area or Periodic Use Area, as defined in those sections, to coordinate deployments pursuant to those licenses in those areas with relevant Federal agencies. This coordination may take the form of a mutually acceptable operator-to-operator coordination agreement between the licensee and the relevant Federal agency. In the absence of such an agreement, this coordination will include a formal request for access through a Department of Defense online portal, which will include the submission of information related to the technical characteristics of the base stations and associated mobile units to be used in the covered area. It does not require a revision to the FCC Form 601.

Section 27.1605 requires non-Federal, secondary radiolocation operations which are relocating from the 3.45 GHz band to alternate spectrum to clear the band for new flexible-use wireless operations to submit certain information to a clearinghouse in order to ensure their relocation costs are fairly reimbursed. It does not require a revision to the FCC Form 601.

Section 27.1607 requires 3.45 GHz Service licensees to share certain information about their network operations in that band with operators in the adjacent Citizens Broadband Radio Service in order to enable the latter to synchronize their operations to reduce the risk of harmful interference. In response to a request by a Citizens Broadband Radio Service operator, a 3.45 GHz Service licensee must provide information to enable Time Division Duplex synchronization. The exact nature of the information to be provided will be determined by a negotiation between the two entities, conducted on a good faith basis. The 3.45 GHz Service licensee must keep the information current as its network operations change.

Section 27.14(w) requires 3.45 GHz Service licensees to provide information on the extent to which they provide service in their license areas. Licensees are required to file two such reports: The first four (4) years after its initial license grant and the second eight (8)

years after such grant, unless they failed to meet the first set of performance requirements, in which case the second report is due seven (7) years after the initial grant. These reports are filed alongside the Form 601 and require no revisions to it.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer.*

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**BILLING CODE 6712–01–P**

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## FEDERAL TRADE COMMISSION

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) has clearance from the Office of Management and Budget (“OMB”) to send information requests, pursuant to compulsory process, to a combined ten or more of the largest cigarette manufacturers and smokeless tobacco manufacturers. The information sought includes, among other things, data on the manufacturers’ annual sales and marketing expenditures for cigarettes, smokeless tobacco products, and electronic devices used to heat non-combusted cigarettes, and sales of tobacco-free nicotine lozenges and pouches. The current OMB clearance for this information collection expires on August 31, 2024. Accordingly, the Commission is providing this second opportunity for public comment while seeking OMB approval to renew the pre-existing clearance and to modify the existing clearance to allow for the collection of additional information concerning annual marketing expenditures for tobacco-free nicotine lozenges and pouches by smokeless tobacco manufacturers or related companies.

**DATES:** Comments must be filed by August 14, 2024.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](https://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open

for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:**

Michael Ostheimer, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Mailstop CC–10507, Washington, DC 20580, (202) 326–2699.

**SUPPLEMENTARY INFORMATION:**

#### A. Background

Pursuant to section 6(b) of the FTC Act, 15 U.S.C. 46(b), the Commission collects information on sales and/or marketing of cigarettes, smokeless tobacco products, tobacco-free nicotine lozenges and pouches, and electronic devices used to heat non-combusted cigarettes (collectively, “subject products”) from manufacturers of cigarettes and smokeless tobacco products. Depending on the type of product a manufacturer produces, the Commission requests the information using two different instruments—that is, a Cigarette Order or a Smokeless Tobacco Order. The Commission compiles and publishes the data in two periodic reports.

The current OMB clearance to collect this information is valid through August 31, 2024 (OMB Control No. 3084–0134). On March 26, 2024, the Commission sought public comment on its proposal to renew its current OMB clearance, and to modify its existing clearance to allow for the collection of additional information concerning annual marketing expenditures for tobacco-free nicotine lozenges and pouches by smokeless tobacco manufacturers or related companies. *See* 89 FR 20967 (Mar. 26, 2024). In response to the **Federal Register** Notice, the Commission received three germane comments, consisting of comments from two individual commenters and the Truth Initiative, a nonprofit tobacco control organization. The following section contains a discussion of the comments and the Commission’s responses.

#### B. Discussion of Comments

Two of the three comments express the commenters’ strong support for the information collection,<sup>1</sup> while one individual commenter generally asserts that government resources spent on collecting this information should be spent on other “much bigger issues”

<sup>1</sup> Comment from Truth Initiative (May 28, 2024), available at <https://www.regulations.gov/comment/FTC-2020-0049-0014> [hereinafter *Truth Initiative Comment*]; Comment from Andy Hernandez (Mar. 27, 2024), available at <https://www.regulations.gov/comment/FTC-2020-0049-0010>.

instead.<sup>2</sup> As discussed below, the Commission finds the collection of the information necessary and useful. Because the remainder of this comment is not germane to this clearance request, the following discussion focuses on the two supportive comments.<sup>3</sup>

Both supportive comments discuss the usefulness of the collection of the information. Specifically, both supportive comments note that the FTC's Cigarette and Smokeless Tobacco Reports provide critical data to researchers, policymakers, advocates, and the general public.<sup>4</sup> Truth Initiative also reiterates the "powerful utility" of the FTC's Cigarette and Smokeless Tobacco Reports by noting that the FTC's Cigarette and Smokeless Tobacco Reports "provide information that is not available elsewhere," and "often provide the basis for strong public health policies with regard to tobacco use and marketing."<sup>5</sup> Additionally, Truth Initiative expresses its approval of the Commission's practice of updating its Cigarette and Smokeless Tobacco Orders to ensure that the resulting reports continue to be relevant and reflect the current cigarette and smokeless tobacco market. Specifically, in this context, Truth Initiative agrees that there is a need to modify the existing clearance to allow for the collection of information concerning annual marketing expenditures for tobacco-free nicotine lozenges and pouches by smokeless tobacco manufacturers or related companies because (1) the sales of tobacco-free nicotine lozenges and pouches more than doubled between 2020 and 2022, and (2) these products appear to be especially popular with youth.<sup>6</sup> Before proceeding to discuss Truth Initiative's recommendations, the Commission would like to note that it appreciates the comments, as they underscore the necessity of this information collection.

As part of its comment, Truth Initiative also makes the following recommendations—each of which would expand the scope of the information collection. First, Truth

Initiative recommends that the Commission request information regarding low nicotine cigarettes. Truth Initiative points out that, in December 2019, the U.S. Food and Drug Administration authorized the marketing by one company of two new tobacco products, which are combusted, filtered cigarettes that contain a reduced amount of nicotine compared to typical commercial cigarettes.<sup>7</sup> Truth Initiative acknowledges that "the market share of these products is extremely small compared to other products," but notes that "it is important that we understand the kind of marketing that is used to promote these products."<sup>8</sup> It recommends that the Commission add the manufacturer of these two products to the list of companies "required to fill out future Cigarette Orders."<sup>9</sup>

The Commission's Cigarette Reports focus on the largest cigarette manufacturers and do not attempt to present a complete picture of the cigarette market. There are numerous smaller manufacturers and importers of cigarettes to which the Commission does not direct its cigarette Orders. Even if the Commission were to direct an order to the one company selling low nicotine cigarettes, it could not publish data regarding "low nicotine" cigarettes because doing so would result in publishing the one company's confidential commercial information. Accordingly, at this time, the Commission does not intend to seek information specifically regarding low nicotine cigarettes, or to direct an Order to the one company marketing such products.

Second, Truth Initiative suggests that the Commission collect and report on information about the content of advertisements for certain products, such as heated, non-combusted cigarettes and oral nicotine products; specifically, whether such products are being advertised as less harmful or better alternatives to traditional cigarette and smokeless tobacco products or as lifestyle products. In support of this recommendation, Truth Initiative notes that, for example, the marketing of oral pouch products as "tobacco-free" alternatives to smoking may lead consumers to ascribe lower risks to these products, despite a lack of

evidence or proper federal authorization.<sup>10</sup> Truth Initiative also recommends that the Commission collect information on how "tobacco companies" use sponsored content in major media outlets to shift public perception. In support of this recommendation, Truth Initiative notes that "[t]obacco companies . . . [are] spending millions on ads designed to reposition them as aligned with public health."<sup>11</sup>

With respect to Truth Initiative's suggestion that the Commission collect information on certain types of advertising content, the Commission notes that the Cigarette and Smokeless Tobacco Reports have historically provided data on sales and advertising expenditures. Additionally, the Commission believes that expanding the scope of the requests to include this type of information would divert critical resources from other mission priorities. Therefore, the Commission declines to make these proposed modifications.

Third, Truth Initiative recommends that the Commission collect marketing data on cigars, and notes that "[y]outh use cigars at rates similar to cigarettes, making marketing information around cigars equally important."<sup>12</sup> The Commission respectfully declines the commenter's recommendation to seek marketing data on cigars as part of its information requests. The Commission believes that doing so would divert critical resources from other mission priorities. Fourth, Truth Initiative recommends that the Commission collect data on the organic, or unpaid, promotion of tobacco products by influencers on social media. According to Truth Initiative, the FTC's Cigarette and Smokeless Tobacco Reports leave "out a crucial and significant segment of how tobacco product use is promoted" because (1) "[t]obacco content is commonplace on social media," and (2) "[r]esearch shows exposure to tobacco content on social media doubles the odds of tobacco use among young people compared to those who are not exposed."<sup>13</sup> Truth Initiative also

<sup>2</sup> See Comment from DarkSoul Longlegs (Apr. 5, 2024), available at <https://www.regulations.gov/comment/FTC-2020-0049-0011>.

<sup>3</sup> Aside from the commenter's general assertion that "[t]here are much bigger issues [that should be] track[ed]," the remainder of the comment discusses general policy matters, such as access to healthcare, marijuana usage, and reproductive rights. See *id.*

<sup>4</sup> See *supra* note 1.

<sup>5</sup> See Truth Initiative Comment, *supra* note 1.

<sup>6</sup> See *id.* (citing Jan Birdsey et al., *Tobacco Product Use Among U.S. Middle and High School Students—National Youth Tobacco Survey, 2023*, 72 *Morbidity and Mortality Wkly. Rep.* 1173 (Nov. 3, 2023), available at <https://doi.org/10.15585/mmwr.mm7244a1>).

<sup>7</sup> Food and Drug Administration, *FDA Permits Sale of Two New Reduced Nicotine Cigarettes Through Pre-market Tobacco Product Application Pathway* (Dec. 17, 2019), available at <https://www.fda.gov/news-events/press-announcements/fda-permits-sale-two-new-reduced-nicotine-cigarettes-through-pre-market-tobacco-product-application>.

<sup>8</sup> See Truth Initiative Comment, *supra* note 1.

<sup>9</sup> See *id.*

<sup>10</sup> See *id.* (citing Patel Czapliski et al., *Oral Nicotine Marketing Claims in Direct-Mail Advertising*, 31 *Tobacco Control* 663 (2022), available at <https://doi.org/10.1136/tobaccocontrol-2020-056446>).

<sup>11</sup> See Truth Initiative Comment, *supra* note 1 (citing Robin Koval et al., *Tobacco Industry Advertising: Efforts to Shift Public Perception of Big Tobacco with Paid Media in the USA*, 32 *Tobacco Control* 801 (2023), available at <https://doi.org/10.1136/tobaccocontrol-2021-057189>).

<sup>12</sup> See Truth Initiative Comment, *supra* note 1.

<sup>13</sup> See *id.* (citing Scott I. Donaldson et al., *Association Between Exposure to Tobacco Content on Social Media and Tobacco Use*, 176(9) *JAMA*

suggests the Commission try to quantify this information by gathering data from social media companies. As noted above, this type of gathering and analyzing advertising content and assessing the impact of that advertising is beyond the scope of these reports.<sup>14</sup>

Truth Initiative also notes that one of its studies, which examined vaping influencers on Instagram, found that “most influencer posts promoting vaping products were unambiguous vaping advertisements promoting a specific brand or product,” and the majority of them did not disclose the influencer’s brand relationship.<sup>15</sup> Accordingly, Truth Initiative also urges the Commission to take enforcement actions against such social media posts on the basis that the influencers’ failure to disclose their brand relationship constitutes a violation of the FTC’s Endorsement Guides (16 CFR part 255). Because any such enforcement actions would be independent from the Commission’s Cigarette Orders and Smokeless Tobacco Orders, this recommendation is not germane to this clearance request.

Accordingly, for the foregoing reasons, the Commission declines to make any adjustments to its prior burden estimates or to modify its initial proposal.

### C. Overview of Information Collection

*Title:* FTC Cigarette and Smokeless Tobacco Data Collection.

*OMB Control Number:* 3084–0134.

*Type of Review:* Revision and extension of currently approved collection.

*Likely Respondents:* Parent companies of the largest cigarette companies and smokeless tobacco companies.

*Estimated Annual Burden Hours:* 3,540 hours.

*Estimated Annual Labor Costs:* \$407,100.

*Estimated Annual Non-Labor Costs:* \$0.

*Abstract:* Pursuant to section 6(b) of the FTC Act, 15 U.S.C. 46(b), the Commission collects information on

sales and/or marketing of the subject products from manufacturers of cigarettes and smokeless tobacco products. The Commission then compiles and publishes the data in two periodic reports.

The Commission’s section 6(b) Orders seek data regarding, among other things: (1) the cigarette or smokeless tobacco sales of industry members; (2) how much industry members spend advertising and promoting their cigarette or smokeless tobacco products, and the specific amounts spent in each of a number of specified expenditure categories; (3) whether industry members are involved in the appearance of their cigarette or smokeless tobacco products or brand imagery in television shows, motion pictures, on the internet, or on social media; (4) how much industry members spend on advertising intended to reduce youth cigarette or smokeless tobacco usage; (5) the events, if any, during which industry members’ cigarette or smokeless tobacco brands are televised; and (6) how much industry members spend on public entertainment events promoting their companies but not specific cigarette or smokeless tobacco products or such products generally. The information requests to cigarette companies also seek information pertaining to the annual sales, giveaways, and marketing expenditures for electronic devices used to heat non-combusted cigarette products, and the information requests to smokeless tobacco companies also seek information pertaining to the annual unit and dollar sales of tobacco-free nicotine lozenges and pouches. Once the Commission’s clearance request has been approved by OMB, the Commission’s information requests to smokeless tobacco companies will also seek information concerning sales and advertising and promotional expenditures for tobacco-free nicotine lozenges and pouches, including the specific amounts spent in each of a number of specified expenditure categories.

### D. Request for Comment

Pursuant to OMB regulations, 5 CFR part 1320, which implement the Paperwork Reduction Act of 1995, as amended, 44 U.S.C. 3501 *et seq.* (“PRA”), the FTC is providing this second opportunity for public comment while seeking OMB approval to renew and modify the pre-existing clearance as described above. For more details about the information collection and the basis for the calculations summarized above, see 89 FR 20967.

Your comment—including your name and your state—will be placed on the

public record of this proceeding. Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such as anyone’s Social Security number; date of birth; driver’s license number or other state identification number or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for ensuring that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “[t]rade secret or any commercial or financial information which is . . . privileged or confidential”—as provided in section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns devices, manufacturing processes, or customer names.

**Josephine Liu,**

*Assistant General Counsel for Legal Counsel.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS–1826–N]

### Medicare Program; Announcement of the Advisory Panel on Hospital Outpatient Payment Meeting—August 26–27, 2024

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This meeting notice announces the virtual meeting of the Advisory Panel on Hospital Outpatient Payment (the Panel) on Monday, August 26, 2024 and Tuesday, August 27, 2024. The purpose of the Panel is to advise the Secretary on the clinical integrity of the Ambulatory Payment Classification groups and their associated weights, which are major elements of the Medicare Hospital Outpatient Prospective Payment System and the Ambulatory Surgical Center payment system, and supervision of hospital outpatient therapeutic services.

**DATES:**

*Virtual Meeting Dates:* Monday, August 26, 2024 and Tuesday, August

Pediatrics 878 (July 11, 2022), available at <https://doi.org/10.1001/jamapediatrics.2022.2223>; Daniel K. Cortese et al., *Smoking Selfies: Using Instagram to Explore Young Women’s Smoking Behaviors*, *Social Media + Society* 4(3) (Aug. 7, 2018), available at <https://doi.org/10.1177/205630511879076>.

<sup>14</sup> Truth Initiative recognizes that gathering information from social media companies is beyond the scope of these information requests. See *Truth Initiative Comment*, *supra* note 1.

<sup>15</sup> *Truth Initiative Comment*, *supra* note 1 (citing Nathan A. Silver et al., *Examining Influencer Compliance with Advertising Regulations in Branded Vaping Content on Instagram*, 10 *Front. Public Health* (Jan. 9, 2023), available at <https://doi.org/10.3389/fpubh.2022.1001115>).